

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MORTON DEWAYNE HAYNER,)
)
)
Plaintiff,)
)
)
vs.) NO. CIV-04-1665-HE
)
)
DANNY GRAHAM, et al.,)
)
)
Defendants.)

ORDER

Plaintiff, a state prisoner appearing *pro se*, seeks relief pursuant to 42 U.S.C. § 1983 for a violation of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Valerie K. Couch who issued her Report and Recommendation, recommending that complaint be dismissed for failure to state a claim and that plaintiff's motion to amend the complaint be denied. The matter is currently before the Court on plaintiff's objection to the Report and Recommendation.¹

Having considered the matter *de novo*, the Court concurs with Judge Couch's conclusion that plaintiff has failed to exhaust his administrative remedies² with respect to Count I of the complaint and that Counts II and III fail to state a claim. Accordingly, the

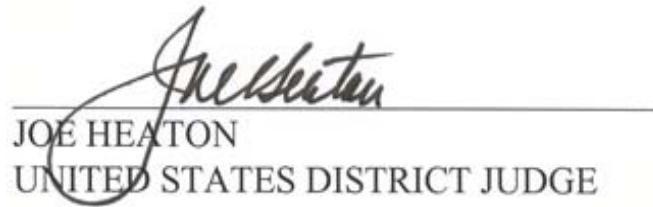
¹*Because plaintiff has objected to the Report and Recommendation, the matter is reviewed de novo. 28 U.S.C. § 636(b)(1)(C).*

²*Plaintiff claims he exhausted his administrative remedies by submitting "numerous" medical requests to jail staff which went unanswered. As noted by the magistrate judge, however, plaintiff fails to allege any specific facts documenting his attempts at utilizing the prison grievance system.*

Court **ADOPTS** the Report and Recommendation in its entirety, **DISMISSES** plaintiff's complaint and **DENIES** plaintiff's motion to amend.

IT IS SO ORDERED.

Dated this 13th day of June, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE